

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHELE A. CLUTTS
Claimant

VS.

SHUGHART, THOMSON & KILROY, P.C.
Respondent

AND

CHUBB INDEMNITY INSURANCE CO.
Insurance Carrier

Docket No. **1,038,848**

ORDER

Respondent and its insurance carrier request review of the May 6, 2008 preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The claimant developed breathing difficulties after she was exposed to drywall dust when renovations were being made at her workplace. She was provided treatment which included Prednisone. She then developed panic attacks, anger, rage and felt flushed. She later developed joint pain, facial swelling and skin tenderness. The respondent argued that claimant was treated for the dust exposure, improved from that condition and was released. Respondent further argued claimant failed to establish that her other symptoms are related to that exposure.

After a preliminary hearing the Administrative Law Judge (ALJ) determined claimant developed a reaction to the Prednisone used to treat her for the dust exposure. As that condition caused claimant's inability to work, the ALJ ordered respondent to provide claimant temporary total disability compensation. But the ALJ interestingly concluded that claimant's medical treatment should remain with the private health care providers and suspended the order "until the effects on her ongoing treatment is determined."

Respondent requests review of whether claimant's current condition and need for medical treatment are a result of a condition or injury arising out of and in the course of claimant's employment with respondent. Respondent argues claimant has not sustained

her burden of proof that her injury arose out of and in the course of employment. Respondent further argues that there is lack of competent medical evidence linking claimant's current condition with her workplace exposure and therefore the ALJ's Order should be reversed.

Claimant argues the ALJ's determination that treatment for her dust exposure caused her current condition should be affirmed. Claimant further requests the Board to designate her physician as the authorized treating physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

On March 4, 2008, claimant's attorney filed an application for preliminary hearing requesting temporary total disability benefits and authorized medical treatment with Dr. Greg Curry. At the time of the preliminary hearing on May 1, 2008, claimant was receiving short-term disability benefits through respondent and medical treatment through her own health insurance.

Claimant was hired as a legal secretary for respondent's Johnson County office in May 2004. The office was located on the 11th floor in Building No. 32. On December 10, or December 14, 2007, claimant was exposed to dust and sand inhalation while working for respondent. Respondent was having some kitchen remodeling done in their office. Claimant's office was located near where the remodeling was being done.

Claimant testified that some walls were being sanded or torn down as well as the kitchen sink and cabinets were being removed. Respondent relocated claimant's work space to a conference room on the other side of the office due to the dust and construction. The conference room had a door but coworkers would forget to keep the door closed.

Claimant testified:

Q. And at some point on December 10, 2007, did you develop any physical symptoms?

A. Yes. I started having a headache, basically from the time I got to work, and then it evolved into some discomfort breathing.

Q. And did you inform anybody at Shughart, Thomson & Kilroy that you were having problems?

A. I did.¹

On December 10, 2007, claimant left work about 30 minutes early. The next morning claimant sought treatment with Dr. Randall Madison. Dr. Madison diagnosed claimant with reactive airway disease worsened by claimant's work. The doctor provided claimant with a mask and a medication refill for her Albuterol inhaler. She returned to work on December 11, 2007, but had to use her Albuterol inhaler. Claimant worked December 12th but also had an appointment with her own doctor due to wheezing problems. The doctor ordered a breathing treatment and prescribed a steroid called Prednisone. She did not work on the 13th but returned to work on December 14, 2007. Respondent referred claimant to Occupational Health Services. The doctor kept claimant on the Prednisone and her Albuterol inhaler. The following Monday, December 17, 2007, claimant continued to work but also notified respondent that she was still having problems. On December 21, 2007, claimant had a follow-up appointment with Occupational Health Services. The doctor advised claimant to see her personal physician regarding asthma control and also to work in a dust-free environment. Respondent relocated claimant to their downtown office.

Claimant thought that the referral to her doctor meant that he would be the authorized physician for continued medical treatment. She testified:

Q. Now, when the doctor advised you to follow up with your family physician, what did you understand that to mean?

A. To continue with him. He actually told me that he was treating me appropriately and he wanted me to continue with that treatment.

Q. Is it your understanding that the referral to the family physician was going to be treated under comp?

A. Yes.²

On December 21, 2007, claimant returned to see Dr. Curry and was given a higher dose of Prednisone due to congestion in her lungs. Then on December 28, 2007, claimant called Dr. Curry due to feeling flushed. On January 2, 2008, claimant was experiencing some anger, rage and difficulty with panic attacks. She contacted her physician and was advised to discontinue the Prednisone immediately. The next day claimant did not have any of these symptoms but began to have swelling in her face, neck, shoulders and chest. She also had pain in her bones and her skin was very sensitive to touch. On January 4,

¹ P.H. Trans. at 10.

² *Id.* at 17-18.

2008, claimant was given a mono test which was negative. She returned on January 7, 2008, and was prescribed Lortab to help with her pain.

Dr. Curry referred claimant to Dr. Sukumar Ethirajan and claimant was examined and evaluated on January 17, 2008. The doctor ordered some additional testing to determine if claimant had leukemia or a viral syndrome which were negative. Next, claimant was referred to Dr. Nancy Becker, a rheumatologist. Dr. Becker examined and evaluated claimant on February 6, 2008. The doctor diagnosed claimant as having possible myalgias and arthralgias due to rapid deescalation in steroids. According to the medical records, claimant was also tested for hepatitis B, lupus, AIDS, and rheumatoid arthritis which were all negative. Again claimant was referred to another doctor for additional testing. Dr. Michael R. Driks ordered an Epstein Barr, Paro Virus and toxoplasmosis testing which were all negative. Dr. Driks referred claimant back to Dr. Ethirajan.

Claimant was also examined and evaluated by Drs. Kaplan and Simon. An EMG was performed and indicated claimant had peripheral neuropathy in her lower calves. Also, a thoracic and lumbar spine MRI was performed.

Claimant testified she is in pain 24 hours a day and has difficulty eating as well as tremors and shakes. Claimant further testified she had not taken Prednisone prior to December 10, 2007. On December 14, 2007, Dr. Greg Curry recommended claimant be taken off work for two weeks or moved to a dust-free location. Dr. Curry wrote a note on January 2, 2008, excusing claimant from work the rest of the day due to a reaction from her medication.

Although claimant thought the referral to her physician meant that her continued treatment was authorized and covered by workers compensation insurance she discovered in February 2008 that the insurance carrier had closed her case on December 21, 2007.

When a primary injury under the Workers' Compensation Act is shown to have arisen out of and in the course of employment, every consequence of that injury, including a new and distinct injury, is compensable under the Act if it is a direct and natural result of the primary injury.³

When claimant began to experience a variety of symptoms she was told to discontinue the use of Prednisone. Dr. Becker noted that after a large dose of Prednisone is administered and the use of the drug is abruptly discontinued there can be a reaction with symptoms such as claimant demonstrated. Dr. Curry referred claimant for testing to determine if there was something else causing claimant's complaints. When those tests

³ *Roberts v. Krupka*, 13 Kan. App. 2d 691, 779 P.2d 447 (1989).

failed to reveal any other cause he concluded claimant's symptoms were due to a reaction to the Prednisone.

Dr. Curry opined that claimant's condition was exacerbated by a reaction she had to the prednisone used to treat her respiratory problems suffered due to the dust exposure at work. The doctor concluded claimant's condition was due to her workplace exposure to dust and her adverse reaction to prednisone.⁴

The aggravation of claimant's work-related injury in this instance was caused by the treatment for her exposure to dust at work and accordingly is a natural consequence of the primary injury and is compensable. This Board Member affirms the ALJ's determination that claimant met her burden of proof to establish that her current condition is the result of her work-related exposure to dust and her adverse reaction to the drug used to alleviate that respiratory problem. As the respondent failed to continue to provide medical treatment the claimant's request to authorize Dr. Curry to provide continued medical treatment is granted.⁵

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁷

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Robert H. Foerschler dated May 6, 2008, is modified to designate Dr. Greg Curry as the authorized treating physician and otherwise affirmed.

IT IS SO ORDERED.

Dated this 31st day of July 2008.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

⁴P.H. Trans., Cl. Ex. 1.

⁵ See K.S.A. 44-510j(h).

⁶ K.S.A. 44-534a.

⁷ K.S.A. 2007 Supp. 44-555c(k).

c: Timothy E. Power, Attorney for Claimant
Jeff S. Bloskey, Attorney for Respondent and its Insurance Carrier
Administrative Law Judge